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Attorney Docket No: PHO-107 DIV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Dees et al.)

Serial No.: 09/382,622)

Filed: August 25, 1999)

For: High Energy Phototherapeutic Agents)

Examiner: G. Gabel)

Art Unit: 1641)

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Commissioner for Patents
Washington D.C. 20231

August 21, 2001

RESPONSE TO ADVISORY ACTION

In response to the Advisory Action of July 25, 2001, a three month extension of time being separately requested, Applicants are submitting herewith a RCE and request that Amendment B (After Final) filed on June 27, 2001 now be entered and examined. Applicants also have the following response to the Examiner's comments in the Advisory Action.

In the Advisory Action, the Examiner states that:

Applicant's amendment of claim 1 introduced new 35 USC 112 first and second paragraph issues requiring further consideration and search in reciting "halogenated xanthene interacting with ionizing radiation...to enhance therapeutic efficacy of ionizing radiation." For example, it is unclear as to whether the term "interacting" as recited would encompass "activating", "inactivating"; thereby, reciting a broader scope enabled by the claimed agent. Further, such recitation does not appear to be fully and literally supported by the specification; thereby, introducing new matter issues into the claimed invention. [ellipsis in original]

Applicants strongly disagree with this rejection by the Examiner and submit that the Examiner's position is unreasonable. As the Examiner seems to be mixing her broad scope rejection with her lack of support rejection, Applicants will discuss each of these rejections together.